

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,

v.

CHARLES ALSTON, M.D., *et al.*,

Defendants.

INDICTMENT NO.

1:19-CR-10041-JDB

***MOTION FOR DEFENSE EXPERT DR. RICHARD MARTIN
TO BE EXEMPT FROM SEQUESTRATION***

COMES NOW, Defendant Charles Alston (“Defendant”), by and through undersigned counsel, respectfully requests this Court to allow defense expert Dr. Richard Martin to be exempt from the rule of sequestration pursuant to Federal Rule of Evidence 615. Defendant shows this Court the following:

1.

The 11/18/19 Superseding Indictment charges Defendant and co-defendant Petway with one count of Conspiracy to Distribute and Dispense Controlled Substances (21 U.S.C. § 846) and five counts of Unlawfully Distributing and Dispensing Controlled Substances and Aiding and Abetting (21 U.S.C. § 841(a)(1)(C), (b)(1)(C); 18 U.S.C. § 2).

2.

Trial begins on 1/6/20, and Defendant anticipates that Rule 615 will be invoked.

3.

Pursuant to Federal Rule of Evidence 615, the court is not authorized to exclude a person whose presence a party shows to be essential to presenting the party's claim or defense. An example of this exemption is an expert who does not testify to the facts of the case, but rather gives his opinion based on the testimony of others. *U.S. v. Reynolds*, 534 Fed. Appx. 347, 365 (6th Cir. 2013).

4.

Defendant intends on Dr. Martin rebutting the expected testimony of the Government's expert by giving his opinions as to his review of the patient files and the lawful conduct of Defendants. Dr. Martin's testimony is essential to Defendant's case. Dr. Martin will be crucial in assisting and advising defense counsel during trial, as it relates to the medical records and standard of care. *See U.S. v. Phibbs*, 999 F.2d 1053, 1072-74 (6th Cir. 1993).

5.

Defendant also intends on having expert witness Dr. Richard Martin testify about whether the prescriptions co-defendant Petway prescribed – and purportedly reviewed by Defendant – were within the scope of professional medical practice (“standard of care”).

6.

Defendant's trial will be complex in regard to treatment plans and pharmaceuticals. Dr. Martin is necessary to the defense to be able to decipher the testimony of the State's witnesses in forming his opinion and in advising defense counsel about the witnesses' testimony.

7.

Wherefore, Defendant respectfully requests this Court to exempt Dr. Richard Martin from sequestration at trial.

Respectfully submitted this 26th day of December 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing
*MOTION FOR DEFENSE EXPERT DR. RICHARD MARTIN TO BE EXEMPT
FROM SEQUESTRATION* upon all parties involved via the federal e-filing system.

This 26th day of December 2019.

/s/ Manubir S. Arora

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CERTIFICATE OF CONSULTATION

I hereby certify that on this day (12/26/19), opposing counsel was contacted via electronic mail and informed of Defendant's intention of filing the within and foregoing *MOTION FOR DEFENSE EXPERT DR. RICHARD MARTIN TO BE EXEMPT FROM SEQUESTRATION*, and on this day (12/26/19), counsel for the Government has not notified Defendant of its stance on the motion at hand. Notwithstanding, the Government has objected to all other motions by Defendant.

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